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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,269	01/22/2001	Takashi Sako	AA335/VB	5067

27752 7590 07/29/2005

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/744,269

**Applicant(s)**

SAKO ET AL.

**Examiner**

Edward J. Webman

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

8.02

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitchen (US 6,106,816) in view of Karlen et al (6,804,545), Rath et al (5,993,729) and Reng et al (US 5,403,508).

Hitchen teaches shampoo compositions comprising copolymers of carboxylic acid such as Carbopol-1342 (abstract, column 3 lines 62-63), an aqueous carrier, namely water (abstract), visible particles, namely titanium coated mica (abstract), viscosity modifiers such as thickeners (column 5 line 52) and a silicon compound (abstract). Cationic conditioning agents are specified (column 4 line 35 et seq.). Pearllising agents such as ethylene glycol distearate are specified (column 5 lines 27-34). However, Hitchen doesn't teach an amphoteric conditioning polymer, a UV absorber, an optical brightener, an herbal extract, or polyethylene glycol with a molecular weight up to 1000.

Karlen et al teach hair cleansing compositions comprising copolymers of carboxylic acid such as Carbopol-1342 (column 5 line 62) and an amphoteric conditioning polymer such as Merquat Plus 3300 (column 7 line 55). Aqueous carriers, namely water (column 8 line 58) and a silicon compound (column 6 lines 11-13) are also disclosed.

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Rath et al teach shampoo and conditioner compositions comprising optical brighteners such as shine enhancer, herbal extracts and UV absorbers (column 2 lines 24-28, example 14).

Reng et al teach pearlescent dispersions comprising fatty acid glycol esters (abstract). An excellent pearlescent effect is disclosed (column 1 line 49). Low molecular polyhydric alcohols, in particular polyethylene glycols having molecular weights between 200 and 800 are specified (column 2 lines 52-66).

IT would have been obvious to one of ordinary skill to add Merquat 3300 to the composition of Hitchen to achieve the beneficial effect of an amphoteric conditioner in view of Karlen et al and to add a pearlescent dispersion comprising fatty acid glycol esters and polyethylene glycols having a molecular weight between 200 and 800 to achieve the beneficial effect of an excellent pearlescent effect in view of Reng et al. As to the other claimed "further comprising" ingredients, it would have been obvious to one of ordinary skill to further include such compounds in the composition of Hitchen to achieve the extra beneficial effect of these additives in view Rath et al.

As to the limitation of "for leave-on use", it is merely and intended use not considered a patentable limitation during the prosecution of composition claims before the USPTO.

Applicants argue that their specification teaches that the cationic polymers of Hitchen can negatively interact with acrylic acid/ alkyl acrylate copolymers. However, applicants do not disclaim such cationic polymers.

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Claims 5 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.


"additional viscosity modifier" and "additional conditioning agent" do not have an antecedent in claim 1. That is, claim 1 does not recite a viscosity modifier or conditioning agent to which the claims are adding a second such agent. Applicants argue that the language "additional" is in the specification. However, in the claims it is redundant in view of the phrase "further comprising".

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, G. Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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